

## PRE-COUNCIL MEETING

### Watershed Management Sediment & Erosion Control

June 12, 2006

#### Attendance:

City Council Members - Robin Eschliman, Jon Camp, Jonathan Cook, Patte Newman, Dan Marvin, Ken Svoboda. Council member Annette McRoy was absent.

Public Works & Utilities - Karl Fredrickson, Nicole Fleck-Tooze, Rock Krzycki.

Building & Safety - Michael Merwick.

Lower Platte South NRD - J. B. Dixon.

#### Discussion:

Newman - Welcome to the Pre-Council of June 12th, where we will talk about soil erosion and sediment control, and please introduce yourselves.

Fredrickson - Good morning, Council. I am Karl Fredrickson, Public Works & Utilities Director, and with me is Mike Merwick with Building & Safety as the Director, and Nicole Fleck-Tooze, the manager of Watershed Division in Public Works. I'd like to let Nicole go over some of the background information and through the facts sheets, and then I'll go through a meeting summary that we had last Friday with builders and developers in regard to sediment and erosion control.

Tooze - Just to give you a little bit of background, and then what I'm going to do is reference the back side of this yellow sheet (Attachment 1), that has an overview and outline on it; it's a sheet that we used for our meeting on Friday, if you want to follow along. Lincoln administers the erosion and sediment control program with assistance from the Lower Platte South Natural Resources District, and I did hand out some photographs (Attachment 2), just to give you an idea of some of the issues that we are facing out there. We've made a lot of improvements over the past several years but we still have a ways to go and we still have some pretty significant issues with sediment in the streets and the storm drain system. This is one of the programs that is required by the City's Storm Water Permit from the State. In March of 2003, there was some new Federal requirements that became effective which were more specific regarding erosion and sediment control on construction sites in particular, and those were reflected in the 2005 update to the State Stormwater Standards in Title 119. Among some other changes, these included a requirement for communities to enforce erosion and sediment control measures on individual building sites, basically those sites that are less than one

acre, which are part of what they call a larger common plan of development. So anytime you have a plat or subdivision with individual lots that are part of that subdivision, each of those lots are required to have erosion and sediment control measures in place. We are obligated under those requirements of the Clean Water Act to have our ordinances and our program meet those same standards. What we are looking to do is just make sure that we are in compliance with the State and Federal regulations. What we're trying to do is to find a workable solution that is effective and that everybody can live with by going through a process of identifying what we're obligated to have in place, and then find the best way to make that happen. If you take a look at the bottom of the yellow page (Attachment 1), there are some pretty serious consequences, both for the City and the industry, if we don't have a working program that meets those standards. There were over \$300,000 in EPA fines levied in Omaha on private construction sites in 2004. Our understanding is that the next community that EPA is planning to visit in Nebraska is Lincoln, so it is important that we have all of our ducks in a row. Karl, I think, provided an article to the Council, a copy of an EPA article about the \$3.5 million settlement that Dallas had for not having an adequate stormwater program in place, so there are some serious consequences. I think that this is an issue that nation-wide is being taken more and more seriously, and then enforced at a local level. The City and the NRD are working with a consulting team that's being led by Patti Banks & Associates (PBA), and Applied Ecological Services, out of the Kansas City area. What they are doing is evaluating the program, getting some input from those impacted, and making some recommendations. What we're really trying to do here is work in partnership with the interested groups for those that are effected by these programs and standards. As part of that we have had several small group meetings with developers, builders, contractors, and neighborhood and environmental groups. We have gotten a lot of good feedback from the past several months, dating back all the way to winter, and we wanted to have a follow-up meeting with some of the groups that are most impacted, the builders, the developers, the contractors. We had that meeting on Friday. What we want to do is talk through the consultants' evaluation and talk through some different alternatives and get those on the table and get some feedback. I think what we're going to do today, we just wanted to give you an idea of what we did in that meeting, the feedback that we received, and then talk about some of the next steps. I will turn it over to Karl to describe our meeting process.

Fredrickson - It was a fairly well attended meeting. Again, we had engineers there, some developers, developer-builders, and just the builders. Generally everybody there understands that this is a Federal mandate and that we need to do something, it's just a matter of what to do. We invited a wide range of those individuals, and had a lot of interesting discussion, went over a little bit of the overview of what the regulations were, what DEQ was formulating in their new regulation. In your packet you should have a letter (Attachment 3), that you should have received a copy of that showed who was invited to the meeting as well, just so you're aware

of some of the firms and individuals that were in attendance or invited to attend. Some of the other issues that came up were that there may be a willing to pay, they know they have to pay; there's a couple of different options as far as what they can do. One of the options that was presented is where the developer would maintain control over the entire site, and put through covenants on each lot that the builders would take care of erosion on their lot with different BMP's, and the City would then go to the developer if, through inspections that's not happening, we would go to the developer to ensure action is taken rather than each individual lot owner. The other option is, each of the lots would have their own and the City would then go to each lot owner. Possibilities of maybe some blending of those two options, or that there might be a little bit of a third option in there as to what other cities may do, may come up. The other important thing is, whatever the fees or the structure of paying, be uniform, everybody would be treated fairly and the same. Some of the discussion was that if the developer would pass the requirements on through covenants that one developer may enforce differently than another developer, the homebuilders themselves didn't really care for that, or at least a few of them didn't, saying one might be more lenient than the other. Some would actually prefer Option 2 due to that. There is no option actually chosen at this point in time. We would have some subsequent follow up meetings with them to determine which would be the better one. Perhaps what the fee structure would be, Mike can address a little bit more of that. Just to let you know that we did invite not only the individuals, but the associations with the associated general contractors and the associated builders and contractors, as trade groups to attend these meetings as well. With that, I will turn it over to Mike.

Merwick - Where we're at right now is, at the end of the meeting, after all the discussion, is that we told everybody that we wanted to have another working group or a task force to scope in and find out exactly what they wanted to do. We are not trying to offer either plan whether the City does it or whether it's the covenant plan. We are just talking with them and getting their ideas and their feedback on what they want to do. We don't have anything that says we've gotta do it this way or we've gotta do it that way, and that's the reason for more dialog with the group. You have developers, home builders, architects, and engineers, and so during our discussion, everybody had a little different idea of what would be best to do. As a result, we need some more meetings to decide. The two concepts, the City doing it or the covenant process, are the two things we are looking at strongly and we will have some more discussion on that. We hope to get them into a meeting within the next couple of weeks. We have about 15 to 18 people, which is a lot of people, but there a lot of different interests and a lot of different ideas out there, so we want to give everybody a chance to go and discuss these one more time and then come up with something. Whatever comes out of these meetings will be what they feel is in their best interests to have as a soil and erosion control plan for the city. As I said, there was a lot of different people there; we had some people that do the grading at all these sites. He was talking about how he grades, how things get changed, and why soil and erosion problems come up and what

could be done to alleviate some of these things. So we have a lot of different information and we're down to the stretch run here where we're going to come up with some plan that they like and they want to have implemented. As Karl said and as Nicole said, this is a Federal mandate program. It's not something that we're doing here in the City; it's been being done all over the country for the last two to three years, so we're just kind of picking it up. Hopefully through these meetings we'll come up with a conclusion that will be brought back to the City Council and then we'll have some type of soil and erosion program in the future.

Newman - OK. I think we've got lots of questions. Can we start in quickly? Jonathan...

Cook - First I want to thank you for going out and meeting with the builders and developers and others who are effected by this. I think it's good to have that cooperative effort. I wanted to ask about two things. One, you said the EPA might be visiting Lincoln next. When you said visiting, will they be going around and looking at how we're doing things, or do they have a list of complaints they'll be acting upon, or what do you think?

Tooze - There are two different potential things. What they did in Omaha is they actually went out and drove the community, probably working with the State Department of Environmental Quality, to identify problem sites. Where they saw individual private sites that were out of compliance, that's where they issued the fines. They've been doing that in communities in many different states. The other thing that they've been doing is performing audits where they go into the community and will come out and identify what is in your program, how are you administering your program, is your program meeting all of the requirements, and that's more of what happened to Dallas. There's one of two ways they can do it; what I spoke of, the most likely near term is that they would come and look at private construction sites to see if there were any out of compliance.

Fredrickson - We do have to have an erosion and sediment control plan with our permit. They do have a form that we showed at our spring meeting and at a previous meeting where the EPA comes in, they've got form sheets that says here's the violation, times the number of violations, times the money. Some of those are \$500, so if you have eight occurrences of the same thing, they go through your site and simply add up the money and say, 'do you consent to pay this or do you want to go to arbitration'. That's the audit that will come through; do you have your plan, is it updated, do you check it, do you do that. Essentially they will state the money you owe them if you're out of compliance.

Cook - So it's two part as far as what we need to do. We have to have this plan in place, but we also have to administer it in a certain way. I mean, if they came to town and found that while we had a fine program, we just weren't devoting the necessary resources to it and they still might even fine us, saying you're just not doing the job you need to do.

Tooze - Absolutely, and that's really what happened in Dallas. They ended up paying an \$800,000 fine, plus they increased their staff by 25% by hiring an additional twelve to fifteen people, so it was very significant. They actually also had some capitol projects they were required to do as part of that \$3.5 million.

Cook - My second question has to do with the options for individual building sites, the covenant option. I understand the individual permit option where the City would enforce it and potentially levy fines. The covenant option, normally covenants are private agreements, so would it just be up to the developer to enforce that against the builder who is on site, or what role would the City play if the developer didn't do that effectively?

Merwick - The covenant works just about like you said. The developer is the one responsible, so if there is a problem and the EPA comes in, they're going to come back right on the developer, and they can come back on the builder too. The one program lets the developer do it and then he administers all that. He has people that look at the sites, that goes out and checks things to make sure they're in compliance and he does all that. On the other side, it's the City doing that; going out and administering those things.

Tooze - And under the covenant option, the City would have... the legal responsible party would be the developer and the City would go back on the developer if there were a problem with an individual building site.

Cook - This isn't just the EPA coming in to monitor compliance then. The City would have their inspectors who would check periodically to see that the developer was enforcing those covenants, but it still gives the developer a little more control and flexibility.

Fredrickson - He is in control, and ultimately the Federal government is of course responsible. They delegate it to the State, the State delegates it to us, and then we manage the plan there. If something went wrong, it could be all the way from the builder, developer, City, and the State would potentially have problems with the EPA should things go wrong.

Merwick - The State has been involved in all the meetings we have had. They were at our meeting on Friday, so they know exactly what we're doing. We're working with them and talking to them all the time, so we just won't have a program and then surprise them one day and say 'here it is'. They've been looking and helping us along the way too.

Fredrickson - Some of the questions on the covenant option is where the builder said, 'well I'll pay whatever per lot extra, developer, you bring in street sweepers and all that so I don't have to worry about it; we'll just pay an association due type arrangement'.

Newman - And there is of course Federal funding that pays for local enforcement of this?

Fredrickson - No. (background laughter) Good question though.

Marvin - I want to pick up on the covenant option. Let's say an out of state builder-developer comes into town and does something that could create a certain number of covenants. Do we have any bonding, or what's the legal avenue up the chain in case the developer doesn't follow the procedure and you end up with a big fine from the EPA? Can that fall back on the City?

Tooze - Ideally no. One of the things we'll have to talk about if we go that route would be some bonding for those measures to be in place. You can also go out, clean it up, and bill them back. There are probably a number of different tools that the City would want to have in place depending on the options, and those are things that we're going to have to talk about with this group as we work through it. But yes, we need to have some measure in place where there's a way for us to recover those costs.

Merwick - What I think in the end too, you can correct me if I'm wrong, if the builder or the developer violates the soil and erosion, it's the Feds or the State that's going to fine him, so they'll be dealing with him directly. They don't just tell us and fine him, they fine him direct.

Marvin - So there isn't a liability back to the City, is what you're saying then, Mike?

Merwick - I didn't say it wasn't any liability, but I'm saying it's the Feds that will say, 'hey this is what you owe and what you're fined', and as Karl said, you can do some mediation or you can pay the fine.

Fredrickson - I think it's that the City does have a program for its permit in place; a solid enforceable program that we carry out uniformly, and that if we don't then the City could take on some risk there. I have some other ones here too. I got curious and looked at the EPA's web site and here's one at the Idaho Department of Transportation, both the State and the Department of Transportation and the contractor had to pay \$895,000 in violations for sending sediment into a lake. If the EPA finds that you don't have a training program at all, they can work their way back up through and say we're going to get the builder, we're going to get the contractor, and we're going to get the City. So I think the idea here is we're trying to be proactive and say we're going to have a good management plan that meets the requirements so at least we're going to safe guard the City, and at the same time, we'll be back in front of your group with some ordinances to say that if they're substantially out of compliance with our plan that we would enforce the plan. If we didn't enforce our plan, then the EPA would probably look back to us and say you're not taking care of business.

- Merwick - One way of enforcing our plan could be shutting down all their building sites.
- Newman - OK, we only have a couple of minutes left, so Ken, Jon, and then Robin.
- Svoboda - What about non-developers building their own sites? For example, two of them we see now, the U-Build-It is in town and doing a number of projects where the individual pays the general contractor, where they wouldn't be notified of this process. Or how about an individual holding a land site that does not have a building permit that is not going to be constructed for maybe a couple of years but get new roads into public right-of-way, into a drainage area, whatever it might be, but it's owned by an individual and not a builder or developer.
- Tooze - You would have to have a system that accommodates those unique circumstances, absolutely. I think you'd set up a system where it gives the option to the developer to continue control of that site and be the point of contact and the responsible party, but that doesn't mean that if you don't have that circumstance on another piece of ground that the City wouldn't regulate that through another mechanism, so you would probably issue a separate permit to the builder or the contractor in that case. We'd still have to have the requirement that if you're disturbing basically an acre of ground, or if your disturbing less than that as part of an overall construction project, that you have a permit.
- Svoboda - You might want to add U-Build-It to that list of contacts, because they are doing a number of sites around town and overseeing them at least.
- Camp - Based upon your meetings to date and the contact you've had with the developers and building community, are you sensing any avenue they'd prefer out of the covenants versus the...?
- Merwick - In the meeting we had Friday, we talked about both sides. There were some pros and cons on both sides. Some of the people wanted to tweak it here and there, so I don't think they have a real keen sense. Different people have their keen sense, but as a group I don't think they've arrived at that consensus project. Hence, the reason for this task force and this working group that we're going to have is we're going to bring them together into some type of consensus. As has been stated, nothing that we come out with or they come out with is probably going to make everybody happy, but we have to have something, so that group is going to say this is the best we think we can do and this is what we really want, and that's what we'll hopefully be able to go with.
- Camp - I do want to congratulate you. I've seen these older photos. Just going around town, it's nice to see those sediment fences up.
- Tooze - Yea, I think we've made some real strides.

- Camp - And with the dedication or rededication of Holmes Lake, I think that was another emphasis that we don't want to have those problems. Thank you.
- Eschliman - When the EPA came in, did they fine the individual building sites directly? They fined somebody in Dallas, they fined other people other than just the building sites?
- Tooze - They've done it both ways. In Dallas, the example that we received was the fining of the community. But in many communities, for example Omaha, they fined the developer or the builder directly. The \$300,000 in EPA fines levied in Omaha, those were levied against private parties. So they really do it one of two ways, sometimes they'll do both. If they find that there's individual sites which are problems, they will fine the builder/developer, but if those sites are problems because the community just doesn't have a good program in place or they're not enforcing their program, then they'll look to the community and they might fine the community.
- Eschliman - Do we expect that there will be a lot of vigilance right at first from them and then that will taper off, or do they program and schedule that they come in and check once every two years?
- Fredrickson - I'll read you something here. This is Idaho DOT and the Scarcella Brothers Corp., quote from the EPA, "Runoff from construction sites is a major contributor to water quality impairment in the US. The EPA is aggressively enforcing Federal regulations to help control this problem." That was from EPA's assistant administrator and compliance assurance office. The other one here is on the Walmart; this was dated 5/3/06, the other May of '04. It essentially says the same thing, only this is Thomas Skinner, assistant administrator of EPA's enforcement. Essentially he says EPA is 'vigorously enforcing', so it looks like at least for two years they're stepping up their enforcement.
- Newman - Any other questions? Final words from you three? Thank you very much; very interesting. Keep us posted.



## PBA/AES Review of Lincoln's Erosion and Sediment Control Program

### *Builders, Developers, and Contractors Meeting*

June 9, 2006

#### OVERVIEW

- State/Federal requirements for water quality not adequately reflected in code
- Two major areas: 1) Erosion and Sediment Control (E&SC); 2) Other Stormwater Pollution

#### EROSION AND SEDIMENT CONTROL

##### 1. State and Federal Requirements

- New Federal requirements March 2003 and 2005 updates to State regulations
- Regulations include enforcing E&SC measures on individual building sites (sites < 1 acre that are part of "larger common plan of development or sale")
- State National Pollutant Discharge Elimination System (NPDES) 'General Permit' for construction activities being updated

##### 2. City/NRD Process

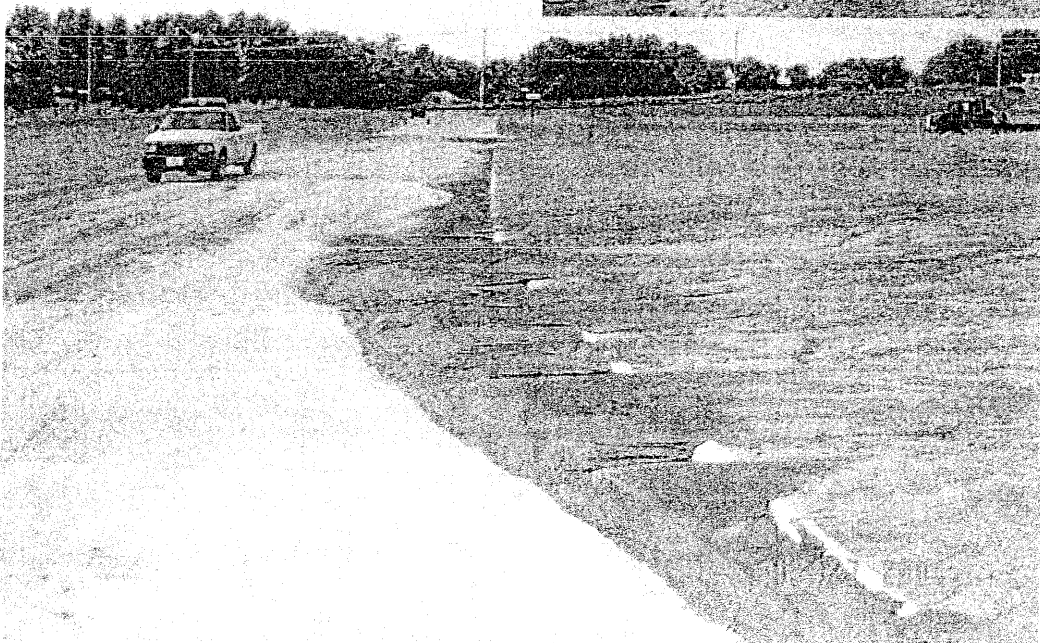
- Lack of enforcement capability, nearby EPA fines and audits
- Fall/Winter 2005 - process included input from interest groups
  - developers
  - contractors
  - City/state agency staff
  - engineers
  - neighborhood groups
  - builders
  - environmental interests

##### 3. Recommendations & Options for E&SC Program

- Recommendations:
  - » Clear Ordinance
  - » Measures for building sites
  - » Financial incentives if possible
  - » Uniform enforcement and penalties
  - » E&SC certification program
- Options for Individual Bldg Sites:
  1. "Covenant Option." No individual small site E&SC permit. Developer uses covenants to manage individual lots. Reflects input from interest groups.
  2. "Individual Permit Option." City manages/enforces all building sites under individual permits, implements inspection program.

#### OTHER ISSUES

1. Over \$300,000 in EPA fines levied in Omaha in 2004.
2. \$425,000 in EPA administrative penalties in four-state region over recent 18 month period.
3. Recent EPA Consent Order requires the City of Dallas, Texas to spend \$3.5 Million on its stormwater management program, including \$800,000 in fines.







**CITY OF LINCOLN**  
**NEBRASKA**

MAYOR COLEEN J. SENG

lincoln.ne.gov

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May 30, 2006

Lyle Loth  
ESP Engineernig Inc.  
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***RE: Required Changes to Lincoln's Erosion & Sediment Control Program***

Dear Lyle Loth:

You are invited to attend a discussion to provide input on updates to the City of Lincoln Erosion & Sediment Control (ESC) Program. These changes are required to meet State and Federal regulations. **Your participation is very important in this discussion.**

**Meeting Information:**

**Friday, June 9, 2006**

**9:00-11:30 a.m.**

**Lower Platte South Natural Resources District Office  
3125 Portia St., Lincoln, NE**

As you probably aware, the City of Lincoln administers the E&SC program with assistance from the Lower Platte South NRD. This program is required by the City's National Pollutant Discharge and Elimination System (NPDES) permit for stormwater quality. The development and building industries in Lincoln have made a lot of strides with improvements and awareness of E&SC issues. However, **the City's current ordinances must be updated to reflect State and Federal requirements.**

In March of 2003, new Federal requirements became effective that were more specific regarding E&SC on construction sites. These new Federal requirements were reflected in a 2005 update to the State stormwater requirements (Title 119). Among other changes, the update includes a requirement for communities to enforce E&SC measures on individual building sites (sites < 1 ac which are part of "larger common plan of development or sale").

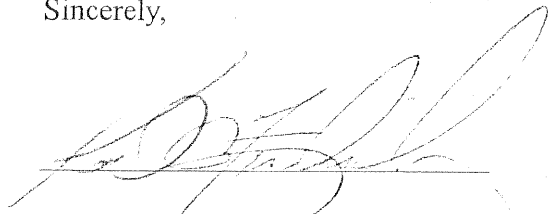
Fines collected by the EPA for non-compliance on Omaha construction sites in the summer of 2004 total \$35,000 for expedited settlements, with several six-figure fines still pending. EPA is expected to be doing inspections in Lincoln as early as this construction season. We believe it is in the interest of all parties to find a workable, effective system that everyone can live with.

We appreciate the input we have received from many builders and developers during the past several months as we have worked through this process. **We are to a point where we have developed a couple of different alternatives based on the input we have received which we need to discuss with representatives of both the building and development community present.**

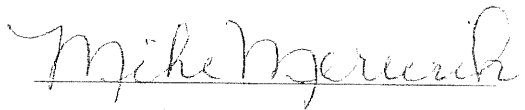
Please join our staff, along with staff from the Lower Platte South NRD and Nebraska Department of Environmental Quality for this important meeting. If you are unable to personally attend, we encourage you to send a representative. This meeting will be facilitated by consultants from Patti Banks & Associates and Applied Ecological Services, Inc.

If you have a question about the meeting, please contact Rock Krzycki in the Public Works and Utilities Department at 441-4959 or rkrzycki@lincoln.ne.us.

Sincerely,



Karl Fredrickson, Director  
Public Works & Utilities Department



Mike Merwick, Director  
Building & Safety Department

cc: Mayor Coleen J. Seng  
City Council  
Glenn Johnson - LPSNRD  
Donna Luckner - NDEQ

bcc: Nicole Fleck-Tooze, Ben Higgins, Gary Lacy, Rock Krzycki, Devin Biesecker  
JB Dixon - NRD  
Chuck Zimmerman, Dale Stertz, Lana Tolbert - B&S



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Lincoln, NE 68516

Christo Design Build Inc.  
6945 N. 7th Street  
Lincoln, NE 68521

Goings Custom Homes Inc.  
4300 W. High Ridge Road  
Lincoln, NE 68522

Hoppe Homes  
P. O. Box 6036  
Lincoln, NE 68506

Paul Hunt Homes LLC  
1736 S. 52nd Street  
Lincoln, NE 68506

Kinning Sydow Bldrs. Inc.  
P. O. Box 6554  
Lincoln, NE 68506

McGill Construction  
P. O. Box 81723  
Lincoln, NE 68501

McKee Construction  
221 Gregory Street  
Lincoln, NE 68521

Rezac Construction  
140 N. 1st Street  
Suite A  
Lincoln, NE 68508

Stonybrook Homes Inc.  
7722 Yancy Drive  
Lincoln, NE 68507

Stertz Family Homes Inc.  
6030 S. 81st Street  
Lincoln, NE 68516

Prairie Home Builders Inc.  
2045 S. Folsom Street  
Suite A  
Lincoln, NE 68522

Barber Homes  
3357 Longview Court  
Lincoln, NE 68506

Greg Schwinn  
Schwinn Construction Co.  
3707 Timberline Court  
Lincoln, NE 68506

Greg Shinaut  
Aquila  
1600 Windhoek Drive  
Lincoln, NE 68512

Bruce Palmer  
Hoegemeyer Palmer Const.  
6301 Orchard Street  
Suite 200  
Lincoln, NE 68506

Dennis Lyon  
Keystone Homes  
5910 S. 58th Street  
Suite B  
Lincoln, NE 68516